Your rights and responsibilities under

ONTARIO'S LABOUR RELATIONS ACT

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Ontario. Labour Rel. Act.

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A fact book for **employers**

Ontario
Ministry of Labour

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IMPORTANT:

This booklet explains only the main points of the Ontario *Labour Relations Act*. It cannot cover every topic in detail. You must *not* make an important decision that may affect your business or your employees based only on what you read here. If you are at all unsure of your rights and responsibilities, you should seek legal advice.

Introduction

The *Labour Relations Act* (LRA) sets out the rights and responsibilities of employers, employees and unions in the following matters:

- starting and joining unions
- collective bargaining and collective agreements
- unfair labour practices
- strikes and lockouts
- resolving disputes

Whether or not your employees are now represented by a union, you should understand how this law may apply to you and your workplace. This booklet will tell you, in plain language, what every employer who is covered by the LRA should know. More information is available, if you need it.

This law has been updated for the first time in over 15 years to keep pace with Ontario's changing economy and workforce. As we approach the 21st century, Ontario's employees and employers must, more than ever before, discover new ways of working together to keep our industries strong and competitive. No law by itself can achieve this; only people can. But by setting out a common framework for workplace relationships, the *Labour Relations Act* will help us all devote more of our time and efforts to our common goal: making Ontario a better, more prosperous, place in which to live and work.

The Purpose of the Labour Relations Act

The *Labour Relations Act* (LRA) sets out the purpose of the law. This is:

- To ensure that employees can freely join the union of their choice
- To enhance the ability of employees to negotiate their pay, their benefits and their working conditions
- To encourage co-operation between unions and employers in order to improve productivity and training
- To increase employee participation in the workplace
- To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and unions
- To provide fast and fair methods of resolving disputes

To help achieve this purpose, the LRA contains rules and procedures that the workplace parties - employers, unions and employees - must follow. The purpose of the LRA guides the interpretation of these rules and procedures.

The Ontario Labour Relations Board

The *Ontario Labour Relations Board* (OLRB) is a neutral tribunal with the responsibility to interpret the LRA. If the workplace parties have a disagreement about any of the rules and procedures in the LRA and how they apply to any situation, the OLRB can be called on to make a decision.

Any employer, union or employee can complain to the OLRB if they feel their rights under the LRA have been violated. The OLRB will consider the positions taken by all sides and make a decision about how the law applies to the complaint. It can also make an order that affects any workplace party in order to ensure that the LRA is upheld.

Many of the OLRB's procedures and practices have been changed so that it can deal with problems more quickly. In particular, it has developed rules for quickly handling complaints about replacement workers, right of access, union jurisdiction and other urgent disputes. Information on these changes can be obtained directly from the OLRB.

These reforms are designed to prevent unnecessarily lengthy and costly hearings where the issues are straightforward and especially where businesses and jobs are affected.

The Right to Join a Union

Every employee in Ontario has the right to join and support the union of his or her choice. As an employer, you cannot interfere with their decision in any way. Neither can a union. Their decision must be voluntary in every way.

If your employees are represented by a union, you and the union may agree that everyone who is covered by a collective agreement must be a member of the union. Employees who have a genuine religious objection to membership in a union may apply to the OLRB for exemption from such an agreement.

Every union member also has the right to participate in any lawful union activity or to act as a union official. Every union has a legal duty to represent every individual union member in a non-discriminatory way.

Note: A bargaining unit cannot include managers or employees who work with confidential labour relations information.

Employer Associations

Every employer in Ontario has the right to join an employer association. The association can represent you in any labour relations matters, including collective bargaining and proceedings before the Ontario Labour Relations Board.

Organizing and Certification

How a Union Receives the Right to Represent a Group of Employees

Most employees join a union by starting a job where there is already a union in place. However, if they do not have a union, they can choose to join one.

During an *organizing drive* a union approaches the employees it wishes to represent and asks for their support. As well, one or more employees may themselves approach a union and ask it to begin an organizing drive. Employees who decide to join the union during an organizing drive normally sign a union membership card to register their support. The LRA does not require any payment or fee to join a union.

The *bargaining unit* is the group of employees that the union represents, or wants to represent. You and the union can agree on who is in the bargaining unit. In some cases, the OLRB will decide which employees are in the unit. Everyone else who works for you in a non-managerial capacity is, for the purposes of the LRA, a *non-bargaining unit* employee.

A union that applies to the OLRB to be *certified* as the representative of a bargaining unit must prove that a majority of the employees in that unit support it. This can be done in one of two ways:

1. the union shows, through signed membership cards, that at least 55% of the employees in the unit support it; or

2. if a union can show that at least 40% (but fewer than 55%) of the employees in the unit have signed membership cards, it can

ask the OLRB to hold a vote. The union will be certified if more than 50% of those voting support it.

In some cases, the OLRB can certify a union if it decides that the true wishes of the employees in a bargaining unit cannot be known because their employer has interfered with the organizing drive in a way that violates the LRA.

In most cases, both full-time and part-time employees will be in the same bargaining unit if the union has overall majority support.

Employees who do not wish to be represented by the organizing union may sign a letter or a petition to the OLRB stating this. However, such a letter or petition will not be considered by the OLRB if it is submitted after the union has applied for certification. Neither will the OLRB consider union membership cards that are submitted after this date.

Consolidated Bargaining Units

The LRA allows bargaining units from different locations of the same employer to be combined by the OLRB. This can only happen if the same union represents (or is applying to represent) these different units. A number of criteria must be considered by the Board in deciding whether consolidation is appropriate.

Full-time and Part-time Employees

During an organizing drive in a workplace with no union representation, the LRA requires unions to seek support from both full-time and part-time employees. If the OLRB finds that the union does not have sufficient support

among this combined group it may nonetheless certify the union to represent either the full-time or part-time employees separately, if it can show sufficient support among one or the other group.

Complaints About Discharge or Discipline Because of Union Support

As an employer, you are not allowed to interfere with a lawful union organizing drive. Among other things, this means that it is illegal for you to penalize (or threaten to penalize) an employee in any way because of a decision to support a union.

Employees who believe they were illegally disciplined or discharged during an organizing drive can complain to the OLRB. The organizing union can represent them, even if it has not yet been granted bargaining rights in your workplace. If that union requests, the OLRB must hold a hearing on the complaint within 15 days and must give its decision within two working days after the hearing is over.

Even though you are not allowed to interfere with a union organizing drive, you still have the right to conduct business in the normal way. For this reason, you have the right to forbid any organizing activity on your property and you may still penalize employees during an organizing drive for causes unrelated to their right to support a union.

Although you are free to express your views about organizing a union, those views cannot include promises, threats, intimidation or undue influence related to your employees' decision about a union.

In order to maintain its impartiality, the OLRB will not give advice on, or answer questions about, the application of the law. If you have any questions about how the LRA may affect your business or your employees, you are encouraged to seek legal advice.

Organizing Activity in Shopping Malls

The LRA does not provide a general right to access an employer's property for organizing (or picketing). However, access is permitted to property normally open to the public, such as a shopping mall, if a workplace is situated within that property. Organizing activity can take place *near* the entrance and exit *and* outside your workplace, even where this is inside the mall property. This activity must not unduly disrupt your operation or any other part of the mall. If it does, you (or any other affected party) can complain to the OLRB, which can order restrictions on that activity.

These same rules apply to picketing during a legal strike or lockout.

Collective Agreements and Collective Bargaining

The *collective agreement* (often called a *contract*) is the agreement made between you and the union about the wages, benefits and working conditions of the employees in the bargaining unit. Usually, the union sends you a written notice that it wants to begin bargaining. This bargaining is often called negotiating. Both sides then meet to negotiate the terms of the collective agreement, including how long it will last. Most collective agreements last for two or three years, but every agreement must last for at least one year.

While the agreement is in force, there can be no strike or lockout.

The LRA requires you and the union to make every reasonable attempt to reach a collective agreement. This is called *bargaining in good faith.*

(Note: The OLRB can settle any part of a collective agreement if either the union or the employer is not bargaining in good faith and there is no other way to adequately remedy the effects of that failure to bargain in good faith. This applies to any collective agreement, including the first.)

First Agreement Arbitration

First agreement arbitration under the LRA applies only where there has never been a collective agreement between the union and the employer covering the bargaining unit.

Either you or the union can request the Minister of Labour to permit your first collective agreement to be settled by arbitration. However, this request cannot be made until 30 days after a legal strike or lockout is possible under the LRA. A three-person arbitration board will hear from both you and the union before it decides on your first collective agreement. The board's decision must be made within 45 days after the hearing begins.

You or the union may also request the OLRB to direct that the first contract be settled by arbitration.

Once a request for first agreement arbitration is made, there can be no strike or lockout. If there is an ongoing strike or lockout at the time of the request, it must stop.

First Agreement Proposal

The party (union or employer) that applies for first agreement arbitration must, along with the application, submit a proposed collective agreement. The other party must also receive this proposal and must respond, within 10 days, with its own proposed collective agreement.

Final Offer Selection

If both you and the union agree, the arbitration board can settle the first agreement by final offer selection. This means that the board will choose one of the proposed collective agreements that has already been submitted.

A first agreement settled by arbitration must have a term of two years from the date of settlement.

Minimum Requirements for All Collective Agreements

Under the LRA, every collective agreement must contain the following important provisions:

1. **A Grievance/Arbitration Process**

   If there is a dispute about the meaning or application of a collective agreement, it must be resolved in an orderly way. This is often called the *grievance procedure*.

   The LRA sets out several rules for the grievance/arbitration process. Most of these rules are designed to speed up that process so that disputes about the collective agreement can be handled both fairly and quickly.

2. **'Just Cause'**

   From the time a union is certified or voluntarily recognized as the bargaining agent, every employee in the unit is protected against discharge or discipline unless it is for just cause. Every collective

agreement must provide such protection. That protection continues after the expiry of the contract until a new contract is signed - even during a legal strike or lockout. The employee's case for reinstatement or removal of disciplinary penalty is heard by an arbitrator or the OLRB.

3. Workplace Consultation

A consultation provision in a collective agreement requires you and the union to meet regularly to discuss workplace and employee issues. If either of you makes a written request for a consultation provision before or during collective bargaining, the resulting agreement must contain one.

Resolving Grievances Quickly

Under the LRA, arbitrators are permitted to resolve procedural matters prior to a hearing. This is intended to reduce the time and expense of arbitrating grievances. It is in the interests of all parties that an arbitration hearing begin on the merits of the grievance alone and be speedily concluded.

Arbitrators have the ability to make interim orders; interpret other labour-related laws, such as the *Ontario Human Rights Code* and the *Employment Standards Act*; and accept submissions presented in any appropriate way that will speed up proceedings, such as by fax or telephone.

Time Limits

An arbitrator must, in most cases, give his or her decision within 30 days after the hearing (60 days in the case of a three-person arbitration board). However, the parties to the arbitration can agree to allow the arbitrator more time. As well, the arbitrator can decide (and give written reasons why) he or she needs more time to make a decision.

Oral Decisions

An arbitrator or an arbitration board can decide to give an oral decision on the grievance right after the hearing. Written reasons for the oral decision must be given, within a reasonable period of time, at the request of either party.

Mediator-Arbitrator

The employer and the union can jointly agree to refer a grievance to a *mediator-arbitrator*. This provision of the LRA can greatly speed up the resolution of grievances. The mediator-arbitrator will help the parties try to settle a grievance without going to arbitration. If no settlement is reached in this way, the mediator-arbitrator will settle the grievance by arbitration, giving a brief decision on the grievance within five days after the hearing ends.

If the employer and the union agree to submit a grievance to a mediator-arbitrator, they must first agree on the nature of the issues in dispute. If they cannot agree on a mediator-arbitrator, they may jointly request the Minister of Labour to appoint one.

Strikes and Lockouts

A legal work stoppage (strike or lockout) can only take place *after* the collective agreement has expired *and* the conciliation process under the LRA has been completed.

During a work stoppage, both you and your employees still have rights and responsibilities. Here are the main ones:

- **Picketing**

  The LRA governs picketing that takes place on private property that is normally open to the public (such as a shopping mall). Picketing within a shopping mall may only happen *near* the entrance and exit *and* outside the affected workplace. You (or any other party affected by the picketing) can apply to the OLRB to limit picketing activity that is unduly disruptive.

- **Employee Benefits**

  The regular benefits provided to employees (health and welfare, dental, life insurance, etc.) must be maintained during a work stoppage if the union pays their cost. There is one exception: you may choose not to allow contributions to the employees' pension plan during a work stoppage.

- **Discharge or Discipline for Cause Only**

  Even though the collective agreement has expired during a strike or lockout, the clause in the agreement that prohibits discipline or discharge except for just cause remains in force. Any disciplinary action of the employer towards bargaining unit employees during a legal work stoppage may be subject to the grievance/arbitration process.

- **Continuation of Business**

  During a work stoppage you still have the right to carry on business. However, there are some restrictions if at least 60% of the employees who voted by secret ballot supported the strike or in the case of a lockout. These include:

  1. You cannot use the services of any employee from the bargaining unit (see "Organizing and Certification") that is on strike or is locked out.

  2. You cannot hire new employees or volunteers to perform the work normally done by the bargaining unit employees. However, existing non-bargaining unit employees who work at the location of a work stoppage may do bargaining unit work in that location only. So can management staff, who can also be moved between locations within a bargaining unit in order to work during a strike or lockout.

  3. Non-bargaining unit employees can legally refuse to perform bargaining unit work during a strike or lockout. Under the LRA employers may not penalize such employees or managers for such a refusal.

- **Essential Services**

  Replacement workers may be used during a strike or lockout in order to maintain important health, social or community services, and the environment. They may also be used to prevent serious damage or breakdown to property or equipment or in an emergency. Except in the case of an emergency, you must:

  1. discuss the use of such replacement workers with the union before the work stoppage begins and

  2. first allow bargaining unit members the opportunity to perform this work.

The OLRB has developed expedited procedures to ensure speedy resolution of disputes on these issues.

- **Contracting Out or Transferring Work**

  The work normally performed by bargaining unit employees may, with certain limitations, be contracted out or transferred to another location of your business that is not involved in the dispute.

Returning to Work After a Strike or Lockout

You and the union can agree on a return-to-work plan following a work stoppage. However, if you cannot agree on such a plan, bargaining unit employees must be returned to their old jobs by seniority. Exceptions to the seniority rule can be made during a start-up period if a senior employee cannot perform the start-up work.

When a Business Is Sold or Work Is Transferred

Existing union bargaining rights are not lost when a business is sold or when building services are transferred to a new contractor. The new employer (often called the *successor employer*) takes the place of the previous employer in labour relations matters covered by the LRA. This means that, in most cases, every LRA and collective agreement obligation of the previous employer automatically becomes the obligation of the new employer.

Before you purchase or take over a business or a contract, you should ensure that you are aware of any outstanding labour relations obligations or proceedings. (In most cases, this includes the obligation to respond to a notice to bargain sent by the union to the previous owner, and to take the place of the previous owner in any ongoing collective bargaining processes or in matters before a labour tribunal.)

Building Services

Under the LRA, if the employees of the previous contractor are represented by a union, a change in employers will *not* affect the right of the union to represent them. If negotiations were under way with the previous owner, the new owner must continue those negotiations. If there is a union organizing drive in progress when a new employer takes over, the drive can continue. As in the purchase of a business, when you acquire a building services contract, you also acquire every LRA and collective agreement obligation of the previous contractor.

(Note: The Employment Standards Act contains some rules that apply in these cases. Information can be obtained from the Employment Standards Office of the Ministry of Labour.)

Adjusting to Change in the Workplace

As an employer, you must inform the union if bargaining unit employees are going to lose their jobs because your business (or part of it) is being permanently shut down. The same rule applies in the case of a mass layoff (50 or more employees), even if no part of the business is being shut down permanently.

The union can then request to meet with you in order to negotiate an adjustment plan. The purpose of this process is to have both the employer and the union work together to develop assistance for those employees who are going to lose their jobs. You must meet with the union within seven days, and both parties must negotiate in good faith towards reaching an adjustment plan and, if the union suggests, to discuss alternatives to the job losses. If such a plan has been negotiated, it is enforceable through a grievance/arbitration process.

The adjustment plan can include any matters that you and the union agree on. The LRA suggests several areas of concern that may be included in a plan, such as: employee counselling and retraining, human resource planning, early retirement and other employment options.

(Note: The Employment Standards Act sets out the rules concerning notice of layoff, termination pay and severance pay. You can obtain information on these topics from any office of the Ministry of Labour.)

Special Provisions for the Construction Industry

The construction industry is different from other industries because each employee normally works for several different employers during a year. For this reason, the *Labour Relations Act* contains special rules that apply only to this industry. These rules affect how the union is certified and how it bargains with employers.

If your business involves construction, and if you have questions concerning your rights or obligations under the LRA, you should seek legal advice.

For More Information

A copy of the *Labour Relations Act* and related publications can be obtained from:

Publications Ontario
880 Bay St.
Toronto, Ontario
M7A 1N8
326-5300 (in Toronto)
1-800-668-9938 (outside Toronto)
1-800-267-6511 (for TTD service)

You can obtain printed information on OLRB rules and procedures and the necessary forms for making applications under the LRA from:

Ontario Labour Relations Board
4th Floor
400 University Ave.
Toronto, Ontario
M7A 1V4

Additional copies of this booklet may be obtained from the Ministry of Labour. Check the Ontario Government blue pages in your telephone book for the office nearest you.

For information or more copies of this pamphlet, call (416) 326-9851

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